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John E. Logan

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November 1, 1999

Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: *Ex Parte* submission
North American Numbering Administrator
CC Docket 92-237
NSD File No. 98-151

Dear Ms. Salas:

On November 1, 1999, Dr. H.G. Miller, Vice President, Mitretek Systems and I met with Ms. Linda Kinney, Legal Advisor to Commissioner Ness, regarding the above matter. During the meeting, we discussed a letter prepared by Professor Lynn A. Stout, which was filed on September 7, 1999, and a document prepared by Mitretek, which was filed on October 29, 1999. The necessary copies are enclosed.

Sincerely,

John E. Logan

Enclosure

cc: Linda Kinney, Legal Advisor to Commissioner Ness

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FEDERAL COMMUNICATIONS COMMISSION
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Lynn A. Stout
Professor of Law

September 3, 1999

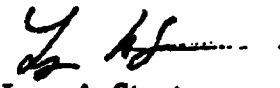
Ms. Magalie Roman Salas
Secretary, Federal Communications Commission
445 12th St., SW
Washington, DC 20554

Re: Comments in Response to Public Notice DA 99-1647,
In The Matter of Request of Lockheed Martin Corporation et al.,
CC Docket 92-237
NSD File No. 98-151

Dear Ms. Salas:

Please find enclosed for filing in the above dockets an original and four copies of Comments in response to Public Notice DA 99-1647 issued August 17, 1999. Also enclosed is a list of those individuals at the Commission who were provided with a copy of the Comments.

Respectfully submitted,


Lynn A. Stout
Professor of Law

Enclosures

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**Comments of Lynn A. Stout
Professor of Law
Georgetown University Law Center**

**Before the Federal Communications Commission, Common Carrier Bureau
September 3, 1999**

Re: Request of Lockheed Martin Corporation and Warburg, Pincus & Co. for Review of the Transfer of Lockheed Martin Communications Industry Services Business from Lockheed Martin Corporation to an Affiliate of Warburg, Pincus & Co. (CC Docket No. 92-237, NSD File No. 98-151) (Response to Public Notice DA 99-1647, August 17, 1999).

Introduction

My name is Lynn A. Stout. I am a Professor of Law at the Georgetown University Law Center, where I teach securities regulation and corporate law (see attached *curriculum vitae*). I have been retained by Mitretek Systems to examine the August 16, 1999, Amended Request for Expeditious Review of the Transfer of the Lockheed Martin Communications Industry Services Business (the Amended Request), and the August 26, 1999, Supplemental Amended Request for Expeditious Review of the Transfer of the Lockheed Martin Communications Industry Services Business (the Supplemental Amended Request). In particular, I have been asked to analyze the proposed corporate structure of NeuStar, Inc. (NeuStar), and especially whether the NeuStar board of directors and the trustees of the proposed NeuStar voting trust would be neutral and independent of Warburg Pincus & Co. and its affiliates (Warburg Pincus).

I conclude that neither the NeuStar board of directors nor the NeuStar voting trust would be neutral and independent of Warburg Pincus.

My analysis is based on the facts described in the Amended Request and attached Exhibits A and B, as modified by the Supplemental Amended Request and its attached Exhibit A. These documents describe the proposed restructuring of Lockheed Martin's Communications Industry Services (CIS), which currently serves as the North American Numbering Plan Administrator (NANPA) and the Local Number Portability Administrator (LNPA), into the new corporate entity NeuStar, Inc. A majority of the stock of NeuStar would be beneficially owned by Warburg, Pincus Equity Partners, L.P. ("WPEP") and controlled by a voting trust.

The Amended Request states that this proposed structure "would ensure the continued neutrality of CIS" and "eliminates any possibility that Warburg Pincus could use its ultimate ownership interest in the NANPA, through WPEP, to advantage other telecommunications investments" (Amended Request at pages 1-2). These conclusions are incorrect.

In order for NeuStar to be deemed independent of Warburg Pincus, at a minimum NeuStar would have to be structured so that an absolute majority of NeuStar's current board of directors, and an absolute majority of all successor NeuStar boards, would be independent. To be independent, it is not enough that such directors have no familial or business ties to Warburg Pincus. Warburg Pincus must also give up control over who serves as an independent director. This is difficult to arrange given that Warburg Pincus would own an absolute majority of NeuStar's voting shares. Although it is possible for Warburg Pincus to cede voting control over its shares to an independent voting trust, in order for the trust to be truly independent Warburg Pincus must again give up control over who serves as an independent trustee and how trustees are compensated. For reasons noted below, the proposed restructuring described in the Amended Request does not meet these standards, and none of the changes proposed in the Supplemental Amended Request remedy this fundamental flaw. Thus Warburg Pincus would continue to be able to influence and control both a majority of the voting shares of NeuStar, and a majority of the NeuStar board of directors. Moreover, even if this were not so, the directors and trustees would have no obligation under corporate and trust law to protect NeuStar's neutrality in numbering administration.

1. Warburg Pincus Can Control the NeuStar Shares Held in Trust.

The Amended Request and Supplemental Amended Request state that 59% of the shares of NeuStar would be controlled by an "independent" voting trust. However, the Trust Agreement described in the Amended Request and in Exhibit B does not create an independent trust.

In order for the trust to be independent from Warburg Pincus, two essential criteria must be met. First, after the initial trustees are appointed, Warburg Pincus must cede power to remove them or to determine their successors in the event of removal, resignation, expiration of term, or death. The proposed trust fails to meet this standard for at least three reasons: (a) a simple majority of the NeuStar board of directors can remove a trustee without cause and at any time, and Warburg Pincus can control the NeuStar board of directors (see Section II, below); (b) successor trustees are selected by the vote of a simple majority of the NeuStar board, and again Warburg Pincus can control the board; and (c) according to the Trust Agreement, no trustee can be selected without the approval of a representative of Warburg Pincus, giving Warburg Pincus veto power over the selection of trustees.

The second essential criterion that must be met for the trust to qualify as independent from Warburg Pincus is that Warburg Pincus must be unable to influence the level of compensation received by the trustees. The proposed trust does not meet this standard because the Trust Agreement is silent as to trustee compensation. Thus, the Trust Agreement does not preclude the NeuStar board of directors from determining whether and to what extent the trustees will be compensated. Because Warburg Pincus can control the NeuStar board, Warburg Pincus can control the trustees' compensation.

The trust described in the Amended Request and Supplemental Amended Request thus fails to meet either of the two fundamental requirements for independence from Warburg Pincus and its affiliates. Warburg Pincus can control both who serves as a trustee, and how much

compensation the trustees receive. The trustees accordingly are not independent of Warburg Pincus.

II. Warburg Pincus Can Control the NeuStar Board of Directors.

The Amended Request and Supplemental Request state that NeuStar would have a five-member board of directors, consisting of: NeuStar's Chief Executive Officer (CEO), who would serve as Chairman; up to two direct representatives of Warburg Pincus; and two "independent" directors.

This proposed structure allows Warburg Pincus to control the NeuStar board. In order to be independent of Warburg Pincus, the proposed board would have to be structured so that independent directors made up a clear majority — a minimum of three out of five — of both the initial board, and all successor boards. Moreover, directors are only independent of Warburg Pincus if Warburg Pincus cannot exercise control over their selection. The proposed board described in the Amended Request fails to meet these standards for a variety of reasons.

First, the Amended Request states that Warburg Pincus will have up to two direct representatives on the NeuStar board, and that no "independent" trustee or "independent" director can be elected without the approval of one of these representatives. This arrangement gives Warburg Pincus veto power over all board decisions regarding these fundamental matters.

Second, the Amended Request states that the CEO of NeuStar will serve as Chairman of the NeuStar board. There is no provision requiring the CEO/Chairman to be independent of Warburg Pincus. Indeed, the first proposed Chairman, Jeffrey Ganek, is a Warburg Pincus nominee. Thus Warburg Pincus would initially control a majority of the NeuStar board of directors. Although the Amended Request does not describe how future NeuStar CEOs will be selected, if NeuStar follows the standard practice of selecting officers by vote of a majority of the board, Warburg Pincus could perpetuate its control of a majority of the board.

Third, although the Amended Request states that the NeuStar board would include two "independent" directors, the facts given in the Amended Request and Supplemental Amended Request do not support that claim that these two directors would be independent. Most significantly, the independent directors could only be elected by a majority vote of the NeuStar board, including the affirmative vote of at least one Warburg Pincus representative. Thus (as in the case of the trustees), Warburg Pincus would exercise control over who serves as "independent" directors.

The net result is that Warburg Pincus could enjoy control and influence over a majority, and possibly all, of the members of the NeuStar board. The NeuStar board of directors accordingly would not be independent of Warburg Pincus.

III. Other Sources of Warburg Pincus Influence and Control over NeuStar

In addition to the factors noted above, the Amended Request describes a number of other characteristics of the proposed corporate restructuring that would contribute to Warburg Pincus' ability to influence and control NeuStar.

First, the initial "independent" members of the NeuStar board will be chosen by NeuStar's CEO and Chairman, Jeffrey Ganek. Mr. Ganek is a Warburg Pincus nominee.

Second, all successor "independent" directors must be nominated by the Chairman of the NeuStar Board, who again need not be independent.

Third, any NeuStar director, including any "independent" director, can be removed by the vote of three-quarters of NeuStar's shares including shares in the voting trust which Warburg Pincus can control (see Section I, above).

Fourth, the trustees of the proposed voting trust will not have control over the shares in the trust with regard to "fundamental" corporate changes such as mergers and consolidations, the issuance of new shares, significant acquisitions, and the incurring of material indebtedness.

Fifth, the Amended Request does not provide evidence that NeuStar's Articles of Incorporation, and/or corporate bylaws, cannot be amended to increase the size of the NeuStar board and so dilute the power of NeuStar's "independent" directors.

IV. Fiduciary Duties Do Not Require NeuStar's Directors and Trustees To Seek Neutrality in Numbering Administration

The discussion above focuses on whether the proposed corporate restructuring would effectively insulate NeuStar from the influence and control of Warburg Pincus. I conclude that it would not, and that fundamental aspects of NeuStar's proposed board of directors and voting trust preclude these entities from being deemed independent of Warburg Pincus. Even if this were not so, however, it is important to note that independent NeuStar directors and voting trustees would remain free to favor the economic interests of Warburg Pincus over the general public's interest in the neutrality of the NANPA.

The Amended Request suggests otherwise when it states that "the trustees will have a fiduciary duty to all the beneficiaries of the trust, so their only incentive is to ensure the ongoing success and neutrality of NeuStar." (Amended Request at 9). This statement is not correct. Under the terms of the proposed corporate restructuring and trust, NeuStar's directors and trustees do not owe fiduciary duties to the general public. Rather, they would owe fiduciary duties primarily to NeuStar's shareholders, including Warburg Pincus. NeuStar's directors and trustees accordingly would be under no obligation to ensure NeuStar's neutrality in numbering plan administration. Nor would the directors and trustees be precluded from favoring a particular beneficiary, such as Warburg Pincus, over other beneficiaries where this can be done without affirmatively harming the other beneficiaries.

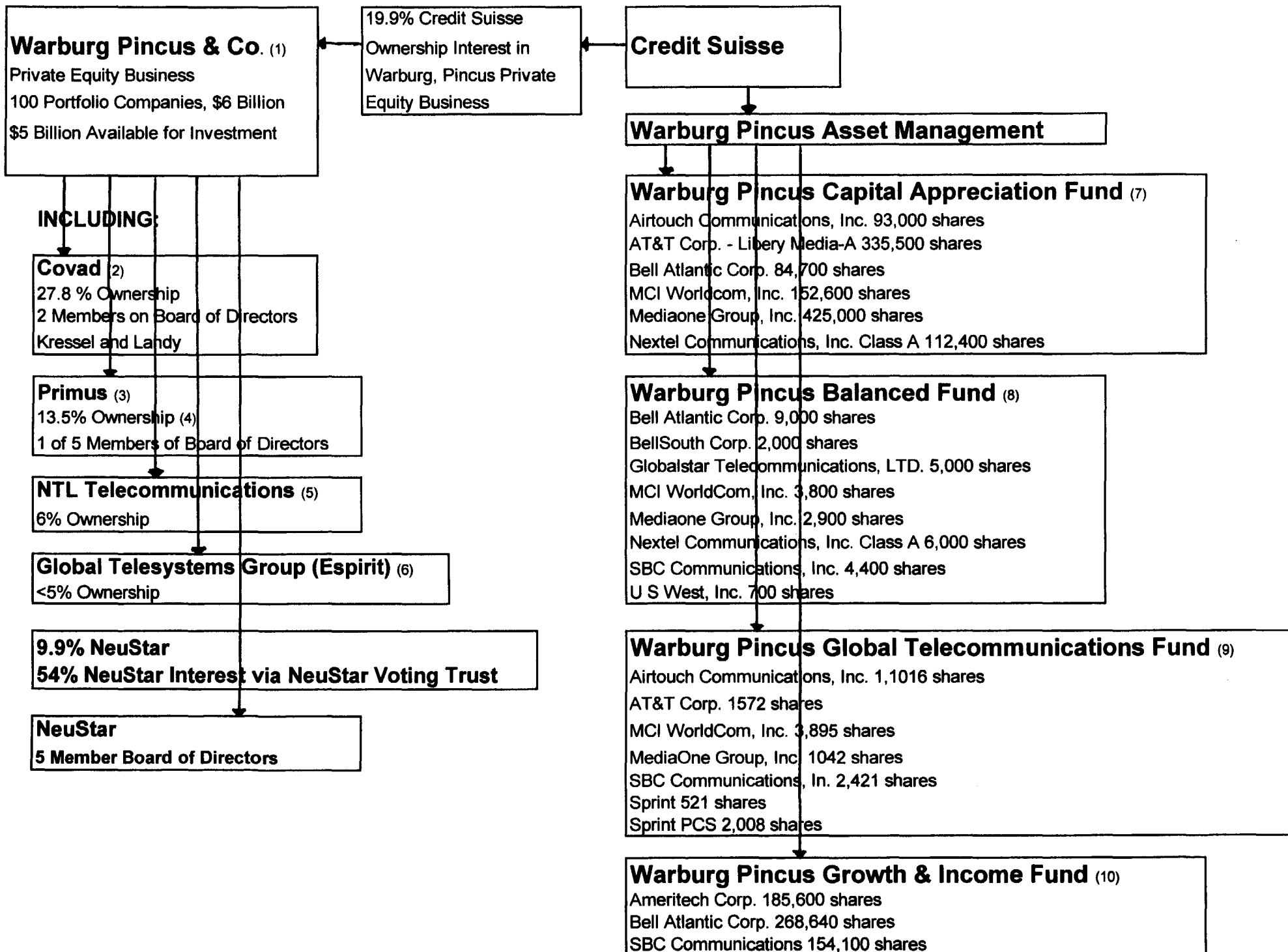
Conclusion

For the reasons stated above I conclude that the proposed new corporate entity, NeuStar Inc., would not be independent from Warburg Pincus and its affiliates. To the contrary, Warburg Pincus would retain significant ability to influence and control NeuStar. Moreover, even if this were not so NeuStar could not be assumed to be neutral in numbering administration.

Respectfully submitted,



Lynn A Stout
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600 New Jersey Avenue, NW
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202.662.9104
September 3 1999



(1) *Request for Expeditious Review of the Transfer of the Lockheed Martin Communication Industry Services Business*, December 21, 1998 at 4.

(2) Form 424B4 filed with the SEC on June 21, 1999 <www.sec.gov>.

(3) Form 10-K for Primus Telecommunication's Group Inc. filed on March 31, 1999. "In the United States, which is the most competitive and among the most deregulated long distance markets in the world, competition is based upon pricing, customer service, network quality, and the ability to provide value-added services. AT&T is the largest supplier of long distance services, with MCI WorldCom and Sprint being the next largest providers. In the future, under the provisions of recently enacted federal legislation, the Company anticipates that it will also compete with Regional Bell Operating Companies ("RBOCs"), Local Exchange Carriers ("LECs") and Internet Service Providers ("ISPs") in providing domestic and international long distance services." <www.sec.gov>.

(4) Form 424B1 filed with the SEC October 13, 1999 <www.sec.gov>.

(5) *Request for Expeditious Review of the Transfer of the Lockheed Martin Communication Industry Services Business*, December 21, 1998 at 16-17.

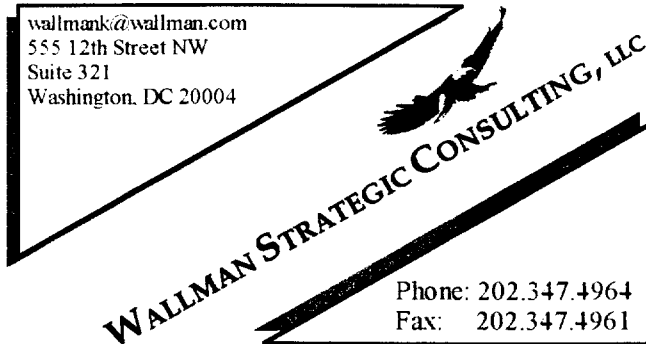
(6) *Id.* at 15.

(7) *Semi Annual Report for month ending April 30, 1999* <www.warburg.com>.

(8) *Semi Annual Report for month ending April 30, 1999* <www.warburg.com>.

(9) *Annual Report for month ending February 28, 1999* <www.warburg.com>.

(10) *Semi Annual Report for month ending April 30, 1999* <www.warburg.com>.



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November 1, 1999

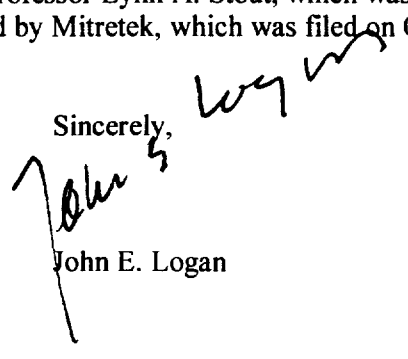
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